IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2015

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

Writ Petition No.20835 of 2015 and
M.P.No.1 of 2015

M/s.Confide Cements Agencies,
Rep. By its Proprietor -
S.Vijayan,
No.35/1, 2, East Coast Road,
Kottakuppam, Vanur Taluk,
Villupuram District. Petitioner

Vs

The Commissioner Tax Officer
(Main), Tindivanam,
Villupuram District. Respondent

This Writ Petition has been filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the respondent in his impugned proceedings made in TIN 33814724322/2013-14 dated 05.12.2014 quash the same as illegal and contrary to the scheme of the Act and further direct respondent to do re-assessment for the year 2013-14 under TNVAT Act, 2006 under the provisions of Section 22(6)(a) of the Act as per the reply made by the petitioner dated 30.12.2014.

For petitioner : Ms.R.Hemalatha
For Respondent : Mr.Manoharan Sundaram,
Additional Government Pleader (T)

O R D E R

Heard Ms.R.Hemalatha, learned counsel for the petitioner, Mr.Manoharan Sundaram, learned Additional Government Pleader (T), who took notice for the respondent and with their consent, the main writ petition is taken up for disposal.

2. This writ petition has been filed by M/s.Confide Cements Agencies, Represented by its Proprietor - S.Vijayan, to quash the impugned proceedings made in TIN 33814724322/2013-14 dated 05.12.2014 as the same is contrary to the scheme and to direct respondent to do re-assessment for the year 2013-14 under TNVAT Act, 2006 under the provisions of Section 22(6)(a) of the Act as per the reply made by the petitioner dated 30.12.2014.

3.Admittedly, in the present case, the petitioner was dealing in selling of cement. Being an assessee, the petitioner received a notice dated 30.09.2014 for the assessment year 2013-14, from the respondent stating that the petitioner has not filed its monthly returns for the year 2013-14, under Section 21 of the Tamil Nadu Value Added Act, 2006 (TNVAT Act, 2006). Further, in the said notice, the respondent alleged that the petitioner has not declared its entire local purchases and sales. Therefore, the respondent has sent proposed assessment under Section 22(4) of the TNVAT Act, 2006. At that juncture, the respondent passed the impugned proceedings by order dated 05.12.2014 under Section 22(5) of the TNVAT Act, 2006.

4.The petitioner sent a reply letter dated 30.12.2014, to the respondent stating that, since, the monthly sales was less than Rs.10 lakhs, it has not filed the monthly returns, as sought for by the respondent. However, within 30 days from the date of completion of assessment, the petitioner has filed an application seeking re-assessment. But, so far, no order has been passed by the respondent on the application of the petitioner. Hence, the petitioner is before this Court with this writ petition.

5.In this regard, it is relevant to extract Section 22(6)(a) of the TNVAT Act, 2006.

> "22(6)(a) Any dealer assessed under sub-section (4) may, within a period of thirty days from the date of service of the assessment order, apply to the assessing authority for re-assessment, along with the correct and complete return as prescribed. On such application, the assessing authority shall, if it is satisfied that the failure to submit the return in time was due to reasons beyond the control of the applicant, cancel the assessment made and make a fresh assessment on the basis of the return submitted:
>
> Provided that no application shall be entertained under this sub-section unless it is accompanied by satisfactory proof of the payment of tax admitted by the applicant to be due or any such instalment thereof as might have become payable, as the case may be."

6.A cursory perusal of the above provision would go to show that, after completion of the assessment under Section 22(4) of the Act, an assessee is entitled to apply to the assessing authority for re-assessment, along with correct and complete return as prescribed. Accordingly, the petitioner has also filed its application to the Assessing Authority mentioning clearly that they have filed duplicate copies of the returns for the assessment year 2013-14, showing that its monthly sale was less than Rs.10 lakhs and therefore, they need not file their returns.

7.In the light of the above provision, the respondent is directed to examine the application filed by the petitioner in terms of Section 22(6)(a) of the Act, and to pass orders on the same, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. In the mean while, the impugned order shall be kept in abeyance. It is needless to mention that the assessing authority shall proceed further without being influenced by the impugned assessment order.

8.With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

jbm

To

The Commissioner Tax Officer
(Main), Tindivanam,
Villupuram District.

1 cc to M/s.R.Hemalatha , Advocate Sr.No.
1 cc to Special Government Pleader(Taxes).Sr.No.35287

W.P.No.20835 of 2015

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pmk.21.8.2015